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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/717,337	11/19/2003	Alexander Benedix	P2001,0349	8258
24131	7590	01/03/2006	EXAMINER	
LERNER AND GREENBERG, PA P O BOX 2480 HOLLYWOOD, FL 33022-2480			DILLON, SAMUEL A	
			ART UNIT	PAPER NUMBER
			2185	

DATE MAILED: 01/03/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/717,337

Applicant(s)

BENEDIX ET AL.

Examiner

Sam Dillon

Art Unit

2185

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 November 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 November 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 11-19-03, 12-22-03.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

1. The instant application having Application No. 10/717,377 has a total of 4 claims pending in the application, there is 1 independent claim and 3 dependent claims, all of which are ready for examination by the examiner.

I. INFORMATION CONCERNING OATH/DECLARATION

Oath/Declaration

2. The applicant's oath/declaration has been reviewed by the examiner and is found to conform to the requirements prescribed in 37 C.F.R. ' 1.63.

II. STATUS OF CLAIM FOR PRIORITY IN THE APPLICATION

3. As required by M.P.E.P. ' 201.14(c), acknowledgment is made of applicant's claim for priority based on an application filed in November 19, 2003.

III. INFORMATION CONCERNING DRAWINGS

Drawings

4. The applicant's drawings submitted November 19, 2003 are acceptable for examination purposes.

IV. ACKNOWLEDGEMENT OF REFERENCES CITED BY APPLICANT

Information Disclosure Statement

5. As required by M.P.E.P. ' 609 (C), the applicant's submission of the Information Disclosure Statement dated November 19, 2003 is acknowledged by the examiner and the cited references have been considered in the examination of the claims now pending. As required by M.P.E.P. ' 609 C(2), a copy of the PTOL-1449 initialed and dated by the examiner is attached to the instant office action.

VI. REJECTIONS NOT BASED ON PRIOR ART

Claim Rejections - 35 USC ' 112

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. **Claims 1-4** are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

8. **Claim 1** recites the limitation "configuration for processing data processing processes" in line 2 and lines 4-5. It is unclear what further effect processing "data processing processes" would have over processing "data". The Examiner notes that the rejection would be withdrawn if Claim 1 were amended to read "configuration for processing data" on line 2 and lines 4-5, and for the purposes of further examination will be read as such.

9. **Claims 2-4** are rejected by virtue of their dependency on claim 1.

VII. REJECTIONS BASED ON PRIOR ART

Claim Rejections - 35 USC ' 102 - Salzburg

10. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

11. **Claims 1-4** are rejected under 35 U.S.C. 102(b) as being anticipated by Salsburg (US Patent Number 5,452,440).

12. As per **Claim 1**, Salsburg is directed to a method for determining an optimum access strategy (*abstract, lines 18-19*) in a configuration for processing data (*computer storage hierarchy, column 1, lines 29-30*), the method which comprises:

providing the configuration for processing data with an operating system (*CPU, column 1, lines 31-32*) allowing at least one system resource (*disk cache, column 5, line 44*) to process system processes (*users, column 6, lines 18-20*) when an application (*scenario, column 6, line 53*) is carried out;

with the system resource, using different access strategies (*abstract, lines 18-19*) to process an application (*scenario, column 6, line 53*) or a system process (*user, column 6, lines 18-20*);

after testing all of the access strategies (*selection of elements to be cached, abstract, lines 2-3*), assigning a value corresponding to an execution speed (*locality parameters, abstract, line 11, see interpretation below*) of the

application or the system processor to each of the access strategies (*abstract, lines 10-12*); and storing the value (*see interpretation below*).

Salsburg states that the cache hit rate is a function of the locality parameters of a data set (*abstract, lines 9-10*), and subsequently the locality parameters fulfil the limitation "a value corresponding to an execution speed". Additionally, Salsburg states that the locality parameters of each data set are used to calculate the cache hit rate (*abstract, 10-14*). Though not expressly disclosed, the locality parameters for each data set must be stored while subsequent locality parameters are calculated, fulfilling the limitation "storing the value".

13. As per **Claim 2**, Salsburg discloses the method according to claim 1, which further comprises:

enabling a user of the system (*see interpretation below*) to determine an optimum access strategy at any time (*column 1, lines 22-24*).

Inherent in the definition of a method is the ability to execute that method (*see column 6, lines 5-20*), fulfilling the limitation "enabling a user of the system ...".

14. As per **Claim 3**, Salsburg discloses the method according to claim 1, which further comprises:

providing a plurality of system resources (*column 1, lines 56-60*); and
determining an optimum access strategy for each individual one of the plurality of system resources (*abstract, lines 1-4*).

15. As per **Claim 4**, Salsburg discloses the method according to claim 1, which further comprises:

providing a plurality of system resources (*column 1, lines 56-60*); and
for an application (*scenario, column 6, line 53*), determining a uniform
optimum access strategy for all of the plurality of system resources (*abstract,
lines 1-4*).

VIII. RELEVANT ART CITED BY THE EXAMINER

16. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.
17. Hubis et al. (US Patent Number 6,343,324) teaches a method for controlling access between a plurality of host computers and at least one hardware device.
18. Joyce et al. (US Patent Number 4,195,342) teaches a data processing system which includes a plurality of system units with multiple memory modes.

IX. CLOSING COMMENTS

Conclusion

a. STATUS OF CLAIMS IN THE APPLICATION

19. The following is a summary of the treatment and status of all claims in the application as recommended by M.P.E.P. ' 707.07(i):

a(4). CLAIMS REJECTED IN THE APPLICATION

20. Per the instant office action, claims 1-4 have received a first action on the merits and are subject of a first action non-final.

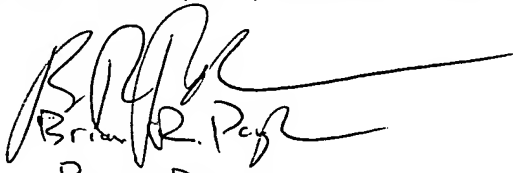
b. DIRECTION OF FUTURE CORRESPONDENCES

21. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sam Dillon whose telephone number is 571- 272-8010. The examiner can normally be reached on 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Don Sparks can be reached on 571-272-4201. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

IMPORTANT NOTE

22. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Brian R. Page
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12/27/05

SAD

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